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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,028	01/17/2002	Gerald A. DiBattista	Mo-6937/MD-01-87-KU	2112
157	7590	03/25/2004	EXAMINER	
BAYER POLYMERS LLC 100 BAYER ROAD PITTSBURGH, PA 15205			EDELL, JOSEPH F	
			ART UNIT	PAPER NUMBER
			3636	
DATE MAILED: 03/25/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/053,028

Applicant(s)

DIBATTISTA ET AL. 

Examiner

Joseph F Edell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 37-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12-18 and 37-39 is/are rejected.
- 7) ☒ Claim(s) 10, 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 6, 8, 9, 12, 15, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,100,204 to Makihara et al.

Makihara et al. disclose a molded article that includes all the limitations recited in claims 1, 2, 4, 6, 8, 9, 12, 15, 17, and 18. Makihara et al. show a molded article having a metallic rigid support 30 (Fig. 2) with a plurality of perforations 38 (Fig. 2) including deformed edge portions 40 (Fig. 2) and anchoring extensions (Fig. 5), a molded flexible member 28 (Fig. 2) of thermoplastic material that abuts a portion of the support, has a hollow interior (Fig. 4), and a molded-in texture (Fig. 4) wherein at least a portion (Fig. 5) of the flexible member extends through some of the perforations of the support thereby fixedly attaching the flexible member to the support, and fasteners 34 (Fig. 2) further fixedly attaching the flexible member to the support.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Makihara et al.

Makihara et al. disclose a molded article that is basically same as the recited in claim 3 except the material of the rigid support is not specified as a thermoplastic, as recited in the claims. Although the rigid support is generically cited as a metal, modifying the material would have been obvious at the time the invention was made because the use of preferred materials discovered by routine experimentation is ordinarily with the skill of the art. Further, it would have been an obvious matter of design choice to modify the material of the rigid support, since the applicant has not disclosed that having the specific material solves any stated problem or is for any particular purpose and it appears the molded article would perform equally well with any well know material used in the seat art.

5. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makihara et al. in view of U.S. Patent No. 6,120,100 to Palazzolo et al.

Makihara et al. disclose a molded article that is basically same as the recited in claims 5 and 7 except the flexible member lacks a fabric covering or integral film, as recited in the claims. Palazzolo et al. show a molded article similar to that of Makihara et al. wherein the molded article has a flexible member 26 (Fig. 5) with an outer surface and further comprising an integral film/fabric covering 20 (Fig. 5) on the outer surface formed by an in-mold decoration process. Therefore, it would have been obvious to one

having ordinary skill in the art at the time the invention was made to modify the molded article of Makihara et al. such that the flexible member has an integral film/fabric covering on the outer surface formed by an in-mold decoration process, such as the molded article disclosed in Palazzolo et al. One would have been motivated to make such a modification in view of the suggestion in Palazzolo et al. that the decorative covering on the flexible member provides an outer surface with various textures and colors.

6. Claims 13, 14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makihara et al. in view of U.S. Patent No. 5,522,645 to Dahlbacka.

Makihara et al. disclose a molded article that is basically same as the recited in claims 13, 14, and 16 except the rigid support lacks seat back and bottom supports and the rigid support lacks a hollow interior, as recited in the claims. Dahlbacka shows a molded article similar to that of Makihara et al. wherein the rigid support has a rigid seat back support and a rigid seat bottom supports 12 (Fig. 6) with flexible cushions 14, 14A (Fig. 6) attached to the supports, and the rigid support is a continuous unit with a hollow interior (Fig. 6). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the molded article of Makihara et al. such that the rigid support has a unitary, rigid seat back and bottom supports and the flexible member has flexible cushions attached to the seat back and bottom supports, and the rigid support has a hollow interior, such as the molded article disclosed in Dahlbacka. One would have been motivated to make such a modification in view of the suggestion in Dahlbacka that the hollow rigid support with attached flexible cushion is

inexpensive to assemble due to the minimum of components and requiring minimal skilled labor.

7. Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makihara et al.

Although the flexural modulus of the flexible member is not specifically recited, modifying the flexible member would have been obvious at the time of Applicant's invention because the use of preferred materials discovered by routine experimentation is ordinarily within the skill of the art. Further, it would have been an obvious matter of design choice to modify the flexible member since the Applicant has not disclosed that having the specific material solves any stated problem or is for any particular purpose and it appears that the flexible member would perform equally well with an well know flexural modulus used in the art.

Allowable Subject Matter

8. Claims 10 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments, see page 11, lines 14-31 and page 12, lines 1-25, filed 24 December 2004, with respect to claim 10 and 11 have been fully considered and are persuasive. The rejection of claims 10 and 11 has been withdrawn.

Applicant's arguments filed 22 March 2004 regarding claims 1-9 and 13-18 have been fully considered but they are not persuasive. Applicant argues that Makihara et al. member 28 is a rigid seat frame and is not a molded flexible member, as recited in claim 1. However, member 28 of Makihara et al. is disclosed as being made from a blow molded synthetic resin and it is the position of the Examiner that a blow molded synthetic resin reasonably meets the claim limitation of "a molded flexible member". Also, Applicant argues that a Makihara et al. must include a cushion in order to be used as a seat. However, the preamble defines a molded article and the preferable additions used in Makihara et al. to construct a comfortable vehicle seat in no way teaches away from the limitations recited in claims 1, 2, 4, 6, 8, 9, 12, 15, 17, and 18. Next, Applicant argues that Makihara et al. fail to disclose molded article with anchoring extensions. However, Figure 5 of Makihara et al. clearly shows anchoring extensions extending into the flexible member wherein each extension has walls, an interior chamber, a wall perforation in the walls and having edges, and a portion of the flexible member extending through the wall perforations to fixedly attach the flexible member to the rigid support. Fourth, Applicant argues that Makihara et al. fail to disclose a molded-in texture. However, Examiner interprets molded-in texture simply as a texture created during the molding of the flexible member, and Figure 4 clearly shows a textured outer surface full of indentations created during the molding of the flexible member to the rigid support. Fifth, Applicant argues that the fasteners 34 of Makihara et al. do not further fixedly attach the flexible member to the rigid support. While the fasteners 34 are intended for mounting the rigid support, Figure 2 of Makihara et al. clearly shows the

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fasteners 34 passing through and further fixedly attaching the flexible member to the rigid support. Lastly, Applicant argues that there is no suggestion to combine Makiyara et al. and Palazzolo et al., Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In this case, Palazzolo et al. provides motivation to combine the reference because molded article with decorative covering on the flexible member having an outer surface with various textures and colors.

The rejections under 35 USC 103(a) drawn toward claims 3, 13, 14, and 16 were argued solely on the premise that the cited art does not teach or suggest the flexible member of the molded article defined in claim 1, and as a result the above 35 USC 103(a) rejections of claims 3, 13, 14, and 16 remain.

Upon consideration of the Applicant's arguments, Examiner maintains the rejections of claims 1-9, and 12-18 and rejects new claims 37-39.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.


JE

March 22, 2004


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600